

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0171-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN CHARLES LOOMIS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005015166001DT

Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Arthur Hazelton

Phoenix
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James J. Haas, Maricopa County Public Defender
By Tennie B. Martin

Phoenix
Attorneys for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner John Loomis seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear

abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Loomis has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Loomis was convicted of sexual conduct with a minor under fifteen and three counts of attempted sexual conduct with a minor. The trial court sentenced him to a presumptive, twenty-year term of imprisonment on the sexual conduct count. It suspended the imposition of sentence as to the remaining counts and placed Loomis on concurrent terms of lifetime probation, to begin upon his discharge from prison. Loomis thereafter initiated a post-conviction relief proceeding, arguing in his petition (1) his plea had not been voluntary and intelligent “[b]ecause of trial counsel’s ineffectiveness,” particularly promises made by his attorney; (2) trial counsel had been ineffective in failing to provide the sentencing court with certain mitigation evidence related to Loomis’s mental status and history of childhood abuse; (3) his plea on one count of attempted sexual conduct was not supported by an adequate factual basis; and (4) his lifetime terms of probation were unlawful. The trial court held an evidentiary hearing on the matter, and thereafter modified Loomis’s probationary term on one of the attempted sexual conduct charges from a lifetime term to a five-year term. But the court rejected his remaining claims and denied relief.

¶3 On review, Loomis claims the trial court abused its discretion in rejecting his claims of ineffective assistance of counsel and “wrongly decided issues of law” in regard to his claim that his guilty plea on one count of attempted sexual conduct was not supported by a sufficient factual basis. In reviewing a court’s ruling after an evidentiary hearing, we defer to that court with respect to its assessment of the witnesses’ credibility

and its resolution of any conflicts in the evidence. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988). We are mindful that the trial court “is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance” the evidence that was presented at the evidentiary hearing. *See State v. Hoskins*, 199 Ariz. 127, ¶ 97, 14 P.3d 997, 1019 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). Consequently, we do not reweigh the evidence. *See State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003). Rather, “[w]e examine a trial court’s findings of fact after an evidentiary hearing to determine if they are clearly erroneous.” *State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994).

¶4 Loomis’s challenge to the trial court’s conclusion that he was not entitled to relief on the grounds of ineffective assistance of counsel centers on his argument that his “plea was not made voluntarily and with understanding.” Specifically, he realleges that he accepted the plea agreement only because of “promises made by his attorney.” And he maintains that in ruling on his petition for post-conviction relief, the court “disingenuously ignore[d]” that it had “completely failed to ask [him] if any promises had been made to him to cause him to enter into the plea.” But the transcript shows the court did ask Loomis, “Besides what we just talked to you about, do you think there is any other promise made to you to get you to sign the plea agreement?” Loomis replied, “No.” Loomis’s other arguments on this issue amount to a request for this court to reweigh the evidence presented at the evidentiary hearing, which we will not do. *See Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d at 924.

¶5 We likewise reject Loomis’s claim that counsel was ineffective in failing to present certain mitigating evidence at sentencing. Because the trial court concluded that such evidence would not have made a difference at sentencing, Loomis has failed to establish that any deficient performance caused him prejudice, and therefore his claim must fail. *See State v. Salazar*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶6 The trial court correctly identified and resolved the remainder of Loomis’s claims in a manner permitting this court or any other to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by restating the court’s ruling in its entirety and we therefore adopt it. *See id.* Thus, although we grant the petition for review, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge